

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES RANANDO STEWART, JR.,

Petitioner,

v.

PATRICK COVELLO,

Respondent.

No. 2:25-cv-0819 DC CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Petitioner, a California prisoner, has filed an amended petition for a writ of habeas corpus under 28 U.S.C. § 2254 and asks that the petition be stayed pursuant to Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003) while he exhausts state court remedies with respect to claims not appearing in the amended petition. Good cause appearing, the court will recommend that this request be granted.

Petitioner's request for a stay under Rhines v. Weber, 544 U.S. 269 (2005) is rendered moot by the filing of the amended petition. Under Rhines, the court can stay a petition with unexhausted claims. Because the amended petition does not contain unexhausted claims, a Rhines stay is not appropriate.

Accordingly, IT IS HEREBY ORDERED that petitioner's original petition for a writ of habeas corpus is dismissed and this action proceeds on the amended petition filed April 11, 2025.

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1 IT IS HEREBY RECOMMENDED that:

2 1. Petitioner's request for a stay under Rhines v. Weber, 544 U.S. 269 (2005) be denied
3 as moot.

4 2. Petitioner's request for a stay under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003)
5 (ECF No. 2) be granted.

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
8 after being served with these findings and recommendations, petitioner may file written
9 objections with the court. Such a document should be captioned "Objections to Magistrate
10 Judge's Findings and Recommendations." Petitioner is advised that failure to file objections
11 within the specified time may waive the right to appeal the District Court's order. Martinez v.
12 Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: April 14, 2025

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15 CAROLYN K. DELANEY
16 UNITED STATES MAGISTRATE JUDGE

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